

1           Q       Let me see if Mr. Bond knows  
2 something. You didn't have a follow up  
3 discussion with anybody at Tennis Channel with  
4 respect to your review of their offer. But do  
5 you know whether anybody in Mr. Shell's group  
6 actually did have the courtesy of a call with  
7 Tennis Channel and walked them through what  
8 your analysis was?

9                   JUDGE SIPPEL: Wait a minute. I  
10 don't want those kind of characterizations.  
11 This courtesy stuff is not what we're talking  
12 about. I just want to know what the flow of  
13 communication was on these things.

14                   BY MR. CARROLL:

15           Q       Was there a communication that  
16 occurred from Mr. Shell's group to Tennis  
17 Channel personnel in which Mr. Shell's group  
18 did, in fact, explain what the analysis had  
19 been that your team did of the MFN offer?

20           A       I do recall seeing some emails  
21 relating to communication between the two. I  
22 can't remember if it was in the '06 or the '07

1 case.

2 MR. CARROLL: Your Honor, if you  
3 look in your binder, the white binder, I'm  
4 doing this now because you've asked about  
5 this, Your Honor.

6 JUDGE SIPPEL: I have.

7 MR. CARROLL: Behind Tab C, the  
8 tab that we're on now.

9 JUDGE SIPPEL: Yes, behind Tab C.

10 MR. CARROLL: Behind Tab C, if you  
11 go to -- there's a blue --

12 JUDGE SIPPEL: Yes, I see it. A  
13 blue divider.

14 MR. CARROLL: Blue divider and if  
15 you go to the next document from 2007, flip  
16 past that blue divider and you have some  
17 handwritten notes.

18 JUDGE SIPPEL: Oh yes. I remember  
19 seeing -- not reading them, but seeing them at  
20 one point, with some explanation. But anyway,  
21 those are the handwritten notes.

22 MR. CARROLL: It's Comcast Exhibit

1 106.

2 JUDGE SIPPEL: I have the Tennis  
3 Channel notes, I have my notation here.

4 MR. CARROLL: And they are. And  
5 the first one is dated 2007. I haven't gotten  
6 there yet.

7 JUDGE SIPPEL: August '07, yes.

8 MR. CARROLL: If you flip to the  
9 next page, Your Honor.

10 JUDGE SIPPEL: Yes.

11 MR. CARROLL: The second page of  
12 this exhibit.

13 JUDGE SIPPEL: I see it.

14 MR. CARROLL: You'll see that they  
15 are notes from August 2006?

16 JUDGE SIPPEL: I do see that.

17 MR. CARROLL: These are Tennis  
18 Channel's notes of the briefing that Mr.  
19 Shell's group gave them on the review of the  
20 MFN.

21 JUDGE SIPPEL: Now say that again.  
22 These are?

1 MR. CARROLL: Tennis Channel's  
2 notes.

3 JUDGE SIPPEL: Yes.

4 MR. CARROLL: Of the briefing they  
5 received --

6 JUDGE SIPPEL: From Mr. Shell.

7 MR. CARROLL: From Mr. Shell's  
8 group and that witness will be testifying  
9 later. Two witnesses later you will hear from  
10 the individual in the group associated with  
11 giving this briefing to Tennis Channel about  
12 the review of the MFN.

13 JUDGE SIPPEL: I know what you're  
14 saying. You don't have to say anything more.

15 MR. CARROLL: Okay.

16 JUDGE SIPPEL: Who is the person,  
17 what witness is going to handle all this?

18 MR. CARROLL: Mr. Donnelly, when  
19 he comes.

20 JUDGE SIPPEL: And his name is on  
21 the '06 document?

22 MR. CARROLL: Yes, it is.

1 JUDGE SIPPEL: And what is it  
2 about the '07 document.

3 MR. CARROLL: The '07 document, I  
4 think Mr. Donnelly will explain this is who  
5 Ann Micka is and who she is in relation to  
6 him. She works with him.

7 JUDGE SIPPEL: Okay.

8 MR. CARROLL: And I mention it  
9 only because Your Honor was asking questions  
10 about it and I didn't want you to leave  
11 without a sense for where this record was  
12 going to develop.

13 JUDGE SIPPEL: Well, I mean it has  
14 to come -- the facts have to come together.  
15 We have a hole in the situation, part of which  
16 is explained by this -- this is one  
17 explanation. I'm not saying I'm accepting it  
18 all the way, but there's an MFN process  
19 involved here and it works this way. It's  
20 intended to work this way.

21 Okay, we know what Comcast's  
22 position is on that. That was -- as far as

1       you were concerned that was based through the  
2       end of it, right?

3               THE WITNESS:   Yes, Your Honor.

4               JUDGE SIPPEL:   If there was  
5       anything more to come out of that it would be  
6       Tennis Channel coming back and saying okay,  
7       that didn't work.   Let's talk about  
8       renegotiating the basic contract or something  
9       in between or working at a new side deal,  
10      whatever.   That's what one might expect to see  
11      happen.

12              The other alternative is well,  
13      okay, we're going to go some place else or  
14      we're going to look elsewhere.   We're going to  
15      see what opportunities lie elsewhere.   And  
16      don't call us, we'll call you.

17              MR. CARROLL:   Yes.

18              JUDGE SIPPEL:   Well, let's see  
19      what happens with this.   Now where do we go  
20      from here?

21              MR. CARROLL:   Should I proceed?

22              JUDGE SIPPEL:   Please do.

1 BY MR. CARROLL:

2 Q With respect to the 2006 MFN offer  
3 process, did you get any reaction back after  
4 you declined the offer? Did Mr. Solomon or  
5 anybody at Tennis Channel call you to complain  
6 about the fact that you declined the offer,  
7 anything like that?

8 A No, not that I recall.

9 Q Did anybody from Tennis Channel  
10 communicate to you and tell you in 2006, they  
11 thought it was discrimination for you to have  
12 turned down the MFN offer or anything like  
13 that?

14 A No.

15 Q Let's roll forward to 2007. By  
16 the way, just to finish this process, on 2006,  
17 in your analysis of the MFN offer, was your  
18 analysis -- did it involve any aspects of Golf  
19 or Versus in any way when you were thinking  
20 about the Tennis Channel offer?

21 A No.

22 Q Did considerations relating to

1       Golf and Versus enter into your analysis of  
2       Tennis Channel and its offer that it had made  
3       to you?

4               A       No.

5               Q       And did the fact that Tennis  
6       Channel wasn't owned by you already, did that  
7       enter into your analysis of the MFN offer they  
8       made you?

9               A       No.

10              Q       In fact, they were offering you an  
11      ownership interest in that, yes?

12              A       That's correct.

13              Q       And so you analyzed it in, am I  
14      correct, from that perspective?

15              A       Yes.

16                      JUDGE SIPPEL: All right, can I  
17      just ask a question?

18                      MR. CARROLL: Please, Your Honor.

19                      JUDGE SIPPEL: How much more do  
20      you intend to have for this witness?

21                      MR. CARROLL: I'm going to do 2007  
22      and just say we have a repeat of the MFN



1 process and I'll cover that quickly and then  
2 I'm going to do the heart of the story in '09,  
3 probably take 15 minutes on that. Do you want  
4 to take a short break?

5 JUDGE SIPPEL: I was getting --  
6 that's my question. I was going to ask if we  
7 take a break now then we can finish Mr. Bond  
8 up before cross examination.

9 MR. CARROLL: Yes.

10 JUDGE SIPPEL: And get a bite to  
11 eat. Okay?

12 MR. CARROLL: Sounds good.

13 JUDGE SIPPEL: Does that sound  
14 okay? Mr. Schmidt, does that sound pretty  
15 good? Well, because it's 10 after 11. He's  
16 almost been on the stand for two hours. Why  
17 don't we take a break. We'll come back  
18 between 20 and 25 after. I'll try to get back  
19 here in ten minutes.

20 MR. CARROLL: Thank you, Your  
21 Honor.

22 JUDGE SIPPEL: Twenty-five after

1 is what we're coming back to. Thank you.

2 (Off the record.)

3 JUDGE SIPPEL: Mr. Bond, you're  
4 still under oath. We're set to go. On the  
5 record.

6 MR. PHILLIPS: Your Honor, we  
7 never got an update on the wedding.

8 JUDGE SIPPEL: I've got a lot to  
9 tell you about the wedding. But the reason  
10 I've been spending so much time on this side  
11 of the table is I thought for sure that you  
12 were up in Minneapolis getting that injunction  
13 straightened out. Can't even get a stay.

14 MR. PHILLIPS: I'm looking to  
15 recover my averages here.

16 (Laughter.)

17 JUDGE SIPPEL: Take the stay.  
18 Take the stay. Well, let's see what happens.  
19 Let's continue on with Mr. Bond.

20 I said to my wife, you know, we  
21 can go over there and crash that thing. She  
22 said who are we going to say we are? Well, we

1       can be the Duke and Duchess, how could I lose  
2       that? I'll tell you later. Let's go.

3       Obviously, you have to represent yourself as  
4       being something. You have to have a piece of  
5       paper that looks good. Right. Oh, I know.

6       It was the Duke and Duchess of Glossary.

7               (Laughter.)

8               She said well, what the hell is  
9       that?

10              (Laughter.)

11              MR. PHILLIPS: That was worth the  
12       wait.

13              (Laughter.)

14              MR. PHILLIPS: Did she get that  
15       joke?

16              JUDGE SIPPEL: No, no, no. She  
17       was what is that? If you say it fast, it  
18       almost sounds like Gloucester, but not quite.  
19       Oh boy, I'd be a devious person if I could.

20              (Laughter.)

21              Okay, let's go. Let's go.

22              BY MR. CARROLL:

1           Q       Mr. Bond, let me pick up where we  
2       left off. We've done the 2006 MFN offer. I  
3       only have a couple of other follow-up  
4       questions on that. And one of them is this.  
5       So when you declined the MFN offer in 2006,  
6       did that mean that Dish had relationship and  
7       terms with Tennis Channel that you did not  
8       have?

9           A       Yes, that's correct.

10          Q       They had equity in Tennis Channel?

11          A       Yes.

12          Q       And you didn't have that. How  
13       about on the distribution side? Did Dish have  
14       a distribution level that was now greater than  
15       yours?

16          A       Yes.

17          Q       And did you have a sense for how  
18       much greater it was as a result of this MFN  
19       process?

20          A       It was specified in the document  
21       that they sent us as the greater of [REDACTED]

22       [REDACTED] subs or the [REDACTED] most penetrated

1 level of service.

2 Q That was the offer as it was made  
3 to you?

4 A Yes.

5 Q That was set forth in Comcast  
6 Exhibit 87, I believe, for the record?

7 A Yes.

8 Q Now here's my question. You  
9 previous said, I think, that Dish is one of  
10 your competitors, yes?

11 A Yes.

12 Q So were you worried that you now  
13 had a competitor out there that had a stronger  
14 relationship with Tennis Channel and greater  
15 distribution of Tennis Channel than you did?

16 A No.

17 Q Why not? Weren't you worried, for  
18 example, that you might lose customers now to  
19 Dish?

20 A No.

21 Q Explain why not?

22 A We had Tennis Channel available in

1       our systems on the sports tier. Dish had it  
2       available on a different tier of service, but  
3       we both had it available in the marketplace.  
4       If we had any customers who wanted it, it was  
5       available to them.

6               Q       How much -- would customers of  
7       Dish get Tennis Channel for free or would they  
8       have to pay for it?

9               A       They'd have to pay for the package  
10       it was in.

11              Q       Whatever package it was offered  
12       at, whatever tier?

13              A       Yes.

14              Q       Do you know how Dish's price for  
15       the package of -- that included Tennis Channel  
16       compared to your price with the sports tier?

17              A       It's really pretty complicated in  
18       all of the math. They were carrying it in, I  
19       believe at that time, a package known as AT250  
20       America's Top 250. The price point of that  
21       was probably north of \$60, I would guess at  
22       the time. We carried it in a sports tier. A

1 sports tier cost about \$5 as an add-on to  
2 other packages, but we had customers with all  
3 different kinds of price points. So you had  
4 different price points really all over the  
5 place, but fundamentally all of our customers  
6 had access to tennis.

7 Q But you wouldn't compare the \$5 to  
8 the \$50 or \$60 of Dish because the \$5 would be  
9 in addition to whatever other levels of  
10 service that your customers are getting,  
11 right?

12 A Correct.

13 Q Okay. But notwithstanding that,  
14 you were not concerned that you were going to  
15 lose customers who would leave Comcast and go  
16 to Dish, for example?

17 A No.

18 Q There's earlier been some  
19 testimony by another witness about a natural  
20 experiment. Is that a term of art you're  
21 familiar with?

22 A No.

1           Q       Let me ask it this way. Did you  
2       have an opportunity in the next year to  
3       observe whether you lost any customers to Dish  
4       because they had this relationship with Tennis  
5       Channel that you did not?

6           A       Well, if the different packaging  
7       that Dish had was in some way causing a  
8       competitive problem for Comcast, we would have  
9       heard it from the field. There was a process  
10      inside of Comcast to track among disconnecting  
11      customers the reason for their disconnect and  
12      that's looked at by the field organization and  
13      also by the corporate organization, not by me,  
14      but others within the organization. And if  
15      that were coming out as an issue in disconnect  
16      and competitive activity, I probably would  
17      have heard about it.

18          Q       Did you hear anything like that  
19      over the course of the next year? By that, I  
20      mean did you hear any feedback to the effect  
21      of we're losing customers to Dish because Dish  
22      has a distribution agreement that's better



1       than Comcast's distribution agreement?

2               A       No.

3               Q       Nothing like that at all?

4               A       No.

5               Q       And before I leave '06 and move to  
6       '07, one other question. I wanted to ask  
7       about channel position. Are you familiar with  
8       that phrase, channel position

9               A       Yes.

10              Q       Explain to us what is channel  
11       position?

12              A       Channel position is simply the  
13       channel number that a service is on. It's the  
14       channel you tune to to watch a particular  
15       channel.

16              Q       Do you remember what channel  
17       number Tennis Channel had on the Comcast  
18       systems?

19              A       It was in the 100s. It was in the  
20       digital sports tier number.

21              Q       What do you mean by it was in the  
22       100s?

1           A       I'm sorry. It had a -- if I can  
2       explain. In most cable systems, channel  
3       numbers between 1 and 100, a two-digit channel  
4       number were typically used for the older,  
5       established networks like ESPN and A&E and USA  
6       and others like that.

7                    When the digital technology was --

8           Q       Can I just interrupt for one  
9       second?

10          A       Yes.

11          Q       Why is that? Why did older  
12       channels as you just listed some, why did they  
13       have two- digit numbers?

14          A       Well, as cable systems developed  
15       technically over time, they started out in the  
16       '70s and '80s having only 12 channels. So you  
17       had channels 1 through 12. And they filled up  
18       those channels with programming. And then  
19       they rebuilt the system. They expanded the  
20       capacity of the system and then they went from  
21       say 12 channels to 50 channels. And then they  
22       launched channels from 12 to 50 and then so on

1 and so forth. And the number of channels  
2 expanded and the more established networks  
3 ended up, generally, with lower channel  
4 positions. Not always, but they generally had  
5 lower channel positions because they had  
6 launched earlier and in most cases what was  
7 traditionally thought of as analog channels  
8 which were these expanded channels, were  
9 channels 0 to 99 in a typical system.

10 Q Okay.

11 A And when the digital architecture  
12 was launched in the mid-'90s, the channels  
13 that were launched after that point of time on  
14 digital had channel numbers in the 100s, in  
15 other words, a three-digit channel number  
16 going from 100 up to 999.

17 Q Do you remember with respect to  
18 Versus and Golf, they were launched back in  
19 the mid-'90s, correct?

20 A Yes.

21 Q Do you remember what channel  
22 numbers they were assigned when they were

1 launched?

2 A Well, it would depend on the  
3 system, but they were in the two-digit range.

4 Q They were in the two-digit range?

5 A I think really for most  
6 distributors.

7 Q And were other, older distributors  
8 such as programmers such as ESPN, did they  
9 have two-digit numbers, too?

10 A Yes.

11 Q How about by the time Tennis  
12 Channel was launched in 2003, was it able to  
13 get a two-digit number or did it have  
14 something else?

15 A A three-digit number.

16 Q Three-digit number. Was there any  
17 part of the MFN offer from Tennis Channel you  
18 received in 2006 in which they asked for a  
19 different channel position of any sort?

20 A No.

21 Q Let's move forward to the next  
22 year unless Your Honor has any more questions

1 for 2006?

2 JUDGE SIPPEL: Thank you, no.

3 BY MR. CARROLL:

4 Q 2007, sir. Roll forward a year.

5 Did there come a time in 2007 when you  
6 received another MFN offer from The Tennis  
7 Channel?

8 A Yes. We got another MFN offer.

9 MR. CARROLL: And Your Honor, for  
10 the record again in the white book behind Tab  
11 C?

12 JUDGE SIPPEL: Yes.

13 MR. CARROLL: It should be behind  
14 that first blue slip. I think we had  
15 previously gone past it when we were looking  
16 at the other notes and now coming back to it.

17 Mr. Bond, I'll give you a separate  
18 copy if you'd like. Here you are, sir. This  
19 should be Exhibit 86.

20 JUDGE SIPPEL: I have 66.

21 MR. CARROLL: I'm sorry, Your  
22 Honor. I misspoke. I got ahead of myself.

1 Hold on, we're not up to Exhibit 66 yet. I  
2 have to distribute Exhibit 86. May I  
3 approach?

4 JUDGE SIPPEL: Please.

5 MR. CARROLL: My apologies.

6 JUDGE SIPPEL: It's okay. No  
7 problem. Thank you. This is a different MFN  
8 than the one we just had?

9 MR. CARROLL: This is the next  
10 year 2007.

11 JUDGE SIPPEL: Thank you.

12 BY MR. CARROLL:

13 Q Okay, Mr. Bond, do you have  
14 Comcast Exhibit 86 in front of you?

15 A Yes.

16 Q Can you identify this for us?

17 MR. CARROLL: This is already in  
18 evidence, Your Honor.

19 JUDGE SIPPEL: I see that.

20 THE WITNESS: This is another MFN  
21 offer that we received from Tennis Channel in  
22 2007.

1 BY MR. CARROLL:

2 Q And did this arrive in the same  
3 way as the one the previous year that you've  
4 described to His Honor already?

5 A Yes.

6 Q Was this the same type of form,  
7 MFN form and if so, could you just point out  
8 to us how the form works?

9 A Yes, in this case there were four  
10 MFN provisions that were being offered. Your  
11 Honor, if you turn to the last page, page  
12 five.

13 JUDGE SIPPEL: I'm with you.

14 THE WITNESS: You'll see four  
15 selections there.

16 JUDGE SIPPEL: I can see them.

17 THE WITNESS: It says equity  
18 carriage incentive?

19 JUDGE SIPPEL: I do.

20 THE WITNESS: B, [REDACTED];

21 C, [REDACTED]; E, [REDACTED]

22 [REDACTED].

1 JUDGE SIPPEL: I see that.

2 THE WITNESS: With a check box.

3 In this case this has us accepting Option B,  
4 accepting Option D, and then it's signed by  
5 Jennifer Gaiski, July 25th.

6 JUDGE SIPPEL: I see that.

7 BY MR. CARROLL:

8 Q And now did you understand why you  
9 were receiving this offer, this MFN offer in  
10 2007?

11 A My understanding is related to a  
12 deal they had concluded with DirecTV.

13 Q Who had concluded?

14 A That Tennis Channel had concluded.

15 Q Okay, so you understood that  
16 Tennis Channel did a deal with DirecTV in  
17 2007, is that right?

18 A Yes.

19 Q And they were under the  
20 requirements of your MFN obligated to make you  
21 an offer of the same terms as the deal with  
22 DirecTV, is that right?



1 A Yes.

2 Q And is that what this is, Exhibit  
3 86?

4 A It is.

5 Q And just very briefly, Option A,  
6 the equity carriage incentive, what was that?

7 A That was a similar offer to what  
8 they had offered in '06. It had different  
9 terms, different equity terms and different  
10 carriage provisions to it, but it was  
11 essentially the same kind of a deal. It was  
12 an enhanced distribution obligation, enhanced  
13 number of subscribers in exchange for equity.

14 Q Do you remember how much equity  
15 was being offered under Option A?

16 A It was [REDACTED] shares and a  
17 warrant to purchase up to [REDACTED] shares  
18 of preferred stock, actually excuse me, it was  
19 -- looks like north of about [REDACTED] shares  
20 of additional stock in exchange for an  
21 obligation to increase the distribution by an  
22 additional [REDACTED] incremental subs,

1 subscribers.

2 Q And in what sense the term that's  
3 used there, and this form came to you, this  
4 form Exhibit 86, the form itself was submitted  
5 to you from Tennis Channel, right?

6 A Yes.

7 Q So the words there equity carriage  
8 incentive, those are Tennis Channel's words to  
9 you, is that right?

10 A They are.

11 Q What does it mean to say equity  
12 carriage incentive? At least what did you  
13 understand that to mean?

14 A That meant that they had provided  
15 equity, they meaning Tennis Channel had  
16 provided equity in the network in exchange for  
17 the distribution commitment that's described  
18 in paragraph two of that provision.

19 Q And the word "incentive", in what  
20 sense is equity an incentive here?

21 A The equity was being provided for  
22 free, so it was an incentive to provide the